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No. 92–448

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In The

# Supreme Court of the United States

October Term, 1992

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ALVAADER FRAZIER,
*Petitioner*

vs.

STATE BAR OF CALIFORNIA
*Respondent*

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## BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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## QUESTION PRESENTED

Whether petitioner, who has been suspended from the practice of law by the California Supreme Court, articulates an adequate ground for the exercise of this Court's discretionary review by contending that disciplinary proceedings were biased and that she was "selectively prosecuted," where the California State Bar Court and the California Supreme Court have examined and rejected her contentions that attorney disciplinary proceedings were institutionally biased and were conducted in violation of her constitutional rights; and where, in determining that abstention was proper under Younger v. Harris, 401 U.S. 37, 915 S.Ct. 746, 27 L.Ed.2d 669 (1971), both the United States District Court, Central District of California, and the Ninth Circuit Court of Appeals found that petitioner had failed to demonstrate

extraordinary circumstances or proven bias on the part of the State Bar of California which would preclude application of the abstention doctrine.

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THE STATE BAR OF CALIFORNIA,
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# BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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## I

## INTRODUCTION

Respondent, The State Bar of California (hereinafter the "State Bar"), respectfully requests that the Court deny this Petition for Writ of Certiorari seeking review of the California Supreme Court's order denying a petition for review of the recommendations of the

California State Bar Court regarding attorney discipline.

The California Supreme Court, on June 15, 1992, ordered that petitioner be suspended from the practice of law for a period of five years, that execution of suspension be stayed and that petitioner be placed on probation for a period of five years subject to certain conditions, including actual suspension for a period of three years and restitution to one of her former clients. (Petitioner's Appendix 1a-3a.)

As respondent will demonstrate, there are no grounds upon which this Court should exercise review under rule 10 of the Rules of the Supreme Court of the United States (hereinafter "Rule 10"). Petitioner's generalized and unsupported claims of constitutional violations, based on alleged institutional bias and

discriminatory disciplinary proceedings, have been resoundingly rejected by the Review Department of California's State Bar Court and by the California Supreme Court. Moreover, both the United States District Court, Central District of California, and the Ninth Circuit Court of Appeals have abstained from enjoining the disciplinary proceedings under Younger v. Harris, 401 U.S. 37, 915 S.Ct. 746, 27 L.Ed.2d 669 (1971), after finding that petitioner had failed to demonstrate a verified showing of actual on the part of the State Bar.

Thus, petitioner has had ample opportunity to present her constitutional claims of discrimination both during the course of her disciplinary proceedings and in several independent judicial forums. Her contention that the abstention doctrine as enunciated in Younger v.

Harris, supra, 401 U.S. 37, has precluded her from airing her allegations of constitutional violations in an unbiased tribunal, and that this Court should therefore hear her claims, is without merit.

## II

## BACKGROUND

### A. The Nature of the State Bar of California.

The State Bar is a constitutional agency established as a public corporation in the judicial branch of state government. All persons licensed to practice law in California are members of the State Bar. Cal. Const., art. VI, §9; Cal. Bus. & Prof. Code, §6001.

Under California's State Bar Act (Cal. Bus. & Prof. Code, §6000 et seq.), the State Bar, as the California Supreme Court's administrative arm, has statutory

authority to conduct disciplinary proceedings; however, the California Supreme Court retains inherent power to control disciplinary matters. Jacobs v. State Bar, 20 Cal.3d 191, 196, 141 Cal. Rptr. 812, 570 P.2d 1230 (1977).

After enactment of the State Bar Act, Bus. & Prof. Code, §§6000 et seq., disciplinary proceedings were originally conducted by the Board of Governors of the State Bar or by committees appointed by the Board, which committees later became known as "disciplinary boards." Cal. Bus. & Prof. Code, §§6044, 6086.5; Emslie v. State Bar, 11 Cal.3d 210, 225, 113 Cal.Rptr. 175, 520 P.2d 991 (1974). In 1979, State Bar rules established and renamed the disciplinary boards as the State Bar Court. 1 Witkin, Cal. Proc. (3d

ed. 1985), §480, p. 530.[1]

At that time, the State Bar Court consisted of volunteer referees who sat in departments of the State Bar Court. The State Bar Court, both then and now, consists of a Hearing Department, which conducts formal proceedings, and a Review Department, which operates as an appellate body in reviewing determinations of the Hearing Department. Rules Proc. of State Bar, rules 2.15 and 2.26 [West's Cal. Rules of Court - State (1989 ed.), pp. 867-868].

Beginning in 1987, the State Bar Court system, at the direction of the

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[1] In 1985, California Business and Professions Code section 6086.5 was amended to substitute the phrase "the State Bar Court" for "disciplinary board(s)" throughout the section as a non-substantive change. See Historical Note, 3B West's Ann. Bus. & Prof. Code (1974 ed., 1989 cum. pocket part), §6086.5, p. 154.

Legislature, was subjected to intensive evaluation and review for a four-year period by a Discipline Monitor appointed by the State Attorney General. California Business and Professions Code, section 6086.9, added by statutes of 1986, chapter 1114, section 6.

In 1988, upon recommendation of the Board of Governors of the State Bar and the Disciplinary Monitor, California Business and Professions Code sections 6079.1 and 6086.65 were enacted, providing for appointment by the California Supreme Court of at least six full time hearing judges to the Hearing Department of the State Bar Court and a full time three-member Review Department consisting of a Presiding Judge, Lay Judge, and Review Department Judge to replace its eighteen volunteer members. Cal. Stats. 1988, ch.

1159, §§7, 13.[2]

In September 1989, the "new" State Bar Court system went into effect. However, all actions of the State Bar remain subject to the immediate and plenary review of the California Supreme Court. Cal. Bus. & Prof. Code, §6083, subd. (a) & 6087. The final disciplinary recommendation of the State Bar Court to the California Supreme Court is still that of its Review Department or the Hearing Judge, if no review by the Review Department is sought. Cal. Bus. & Prof.

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[2] California Business and Professions Code, section 6086.5 was also amended to state that the Board of Governors "shall establish a State Bar Court, to act in its place and stead in the determination of disciplinary and reinstatement proceedings. . . ." Cal. Stats. 1988, ch. 1159, §11. In the Hearing Department, the Board of Governors may continue to appoint volunteers and retired judges, now to be called "pro tempore judges" of the Hearing Department, to hear disciplinary matters. Cal. Bus. & Prof. Code, §6079.1(e).

Code, §6086.65(d). The member may thereafter petition for review of the Review Department's recommendations in the California Supreme Court. Cal. Bus. & Prof. Code, §§6078, 6081, 6083, 6087; rule 952(a) of the California Rules of Court. If review is granted, the California Supreme Court conducts an independent examination of the entire record, weighs the evidence and passes upon its sufficiency. Alberton v. State Bar, 37 Cal.3d 1, 11, 206 Cal.Rptr. 373, 686 P.2d 1177 (1984), cert. den 470 U.S. 1007, 105 S.Ct. 1366, 84 L.Ed.2d 386 (1985). In all cases, the ultimate determination as to the degree of discipline to be imposed is made by the California Supreme Court. McCray v. State Bar, 38 Cal.3d 257, 272, 211 Cal. Rptr. 691, 696 P.2d 83 (1985).

B. Statement of Facts.

The facts pertinent to this case are

as follows:

Petitioner was admitted to the practice of law in California in December 1982. (Petitioner's Appendix 5a.) On or about August 11, 1988, the Office of Trial Counsel of the State Bar commenced formal disciplinary proceedings against petitioner in the State Bar Court. Petitioner was charged with numerous counts of attorney misconduct, dating from November 1983 to May 1985, and covering allegations that petitioner had failed to perform, misappropriated client funds and abandoned clients. (Petitioner's Appendix 5a.)

From August 1988 to late April 1989, various pretrial proceedings took place in the State Bar's disciplinary action against petitioner. During this pretrial period, petitioner claimed that she was the subject of a racially biased, bad

faith, selective prosecution. During the course of the trial, petitioner also filed motions to disqualify the hearing referee. (Petitioner's Appendix 19a-32a.)

On April 28, 1989, in an attempt to stay her disciplinary proceedings, petitioner filed an action in federal court, Frazier v. State Bar of California et. al., United States District Court, Central District of California, Case No. 89-2586 WDK, requesting declaratory and injunctive relief in the form of a preliminary injunction enjoining the State Bar from proceeding with the disciplinary action. Petitioner claimed that she was being prevented in the disciplinary proceedings from presenting her constitutional claims of racial and gender discrimination. Petitioner also contended that she was being subjected to an unconstitutionally selective and

discriminatory prosecution. Petitioner argued that the denial of her discovery requests defeated her attempts to develop a case of systemic bias based on race and gender on the part of the State Bar. (Respondent's Appendix A-4, A-5, A-8.)[3]

On May 5, 1989, the district court denied petitioner's application for a preliminary injunction, abstaining under Younger v. Harris, supra, 401 U.S. 37. In denying the application, the district

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[3]For the Court's convenience, respondent has appended to its opposition brief, a copy of the unpublished decision of the United States Court of Appeals for the Ninth Circuit in Frazier v. State Bar of California, et al., No. 89-55675, D.C. No. CV 89-2586-WDK, filed January 14, 1991 in which the Ninth Circuit affirmed the district court's dismissal of petitioner's federal action on abstention grounds. In so doing, the court of appeals conveniently summarized the nature of petitioner's constitutional claims and the underlying basis for the district court's holding. All references to "Respondent's Appendix" are references to the copy of this decision.

court held that petitioner's rights were adequately protected and that there were no extraordinary circumstances or proven bias that precluded the court from abstaining. (Respondent's Appendix A-5.)[4]

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[4] In so doing, the district commented:

> You're not dealing with an organization here who is terribly unresponsive. Quite to the contrary. This is not that type of organization at all. And in my view they have been deeply solicitous to minority interests. I don't find that there is any type of exceptional circumstance here that would allow you to basically bring your claims to this Court, . . . I don't think you can avoid Younger under the circumstances. I don't think you presented the facts to avoid it. . . .
>
> This Court must dismiss. [Petitioner's] rights are adequately protected. There are no extraordinary circumstances or proven bias on the part of the State Bar which would preclude the application of the abstention doctrine. (Reporter's Transcript of Proceeding, May 5, 1989, Frazier v. State Bar of California,

Petitioner appealed from the district court's order to the Ninth Circuit Court of Appeals. On January 14, 1991, in an unpublished opinion, the Ninth Circuit affirmed the dismissal of petitioner's federal action on abstention grounds. In so doing, the court of appeals emphasized that even if it were true that petitioner could not adequately raise her constitutional claims in State Bar Court because of alleged institutional bias, the State Bar Act provided for adequate judicial review of her disciplinary proceedings. (Respondent's Appendix A-8, A-9; Cal. Bus. & Prof. Code §6082, §6083.) The court also held:

> There was no specific factual evidence that the disciplinary proceedings were brought merely to harass or simply because

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> United States District Court, Central District of California, pp. 17:4-14, 21:20-24.)

> [petitioner] is a Black woman. In fact, many of the former clients who initiated complaints against [petitioner] were black. . . .
>
> None of the evidence offered by [petitioner] was sufficient to overcome the presumption that the State Bar and the California Supreme Court were unbiased. The district court correctly determined that there were 'no extraordinary circumstances or proven bias on the part of the State Bar.' (Respondent's Appendix A-11.)

After extensive hearings in the disciplinary proceedings, a State Bar Court hearing referee concluded that petitioner had: abandoned seven clients; failed to return unearned fees to five clients; failed to perform legal services competently for seven clients; committed various acts of moral turpitude and dishonesty; failed to return advanced costs and other client funds to which three clients were entitled; failed to deposit client funds in a trust account;

and wilfully accepted employment for which she had not the time, skill and resources to perform with competence, all in violation of California's Rules of Professional Conduct. (Petitioner's Appendix 5a-7a.)

The hearing referee further opined that the nature of petitioner's misconduct, coupled with aggravating factors, such as her past suspension for nonpayment of fees, her failure to cooperate at the hearing, and bad faith toward and harm to her former clients, warranted disbarment. (Petitioner's Appendix 8a.)

The Review Department of the State Bar Court, upon its independent review of the record, made modifications to the Hearing Department's findings of fact and conclusions of law and reduced the Hearing Department's recommended discipline of

disbarment to suspension. (Petitioner's Appendix 10a-11a.) Nevertheless, in reducing the recommended discipline, the Review Department emphasized the serious nature of petitioner's misconduct:

> [W]e find [petitioner] culpable of serious misconduct, commencing just over one year after her admission. . . .
>
> We find this misconduct to warrant serious discipline, but given [petitioner's] mitigating and rehabilitative evidence, we do not conclude, as did the referee, that disbarment is required. The protection of the public interest and the profession will be served in this matter by a five year suspension stayed on conditions of three years actual suspension and until restitution and rehabilitation are proven as well as placement on a period of supervised probation on terms outlined at the conclusion of this opinion. (Petitioner's Appendix 9a-11a.)

The Review Department also examined and rejected petitioner's numerous contentions that she was denied a fair trial because

of allegedly discriminatory pre-trial proceedings and bias of the hearing referee. (Petitioner's Appendix 19a-32a.) Regarding issues concerning pre-trial discovery, the Review Department noted that the State Bar examiner had provided what documents it had in connection with the allegations in the complaint. However, the examiner was unable to provide any information concerning the race, gender or practice of members of the California bar, or other statistical data sought by petitioner, as such information was not gathered or maintained by the State Bar's membership records. (Petitioner's Appendix 20a-21a.) In upholding the hearing referee's denial of petitioner's motion to compel this discovery, the Review Department stated:

> The denial of [petitioner's] motion to compel discovery does not demonstrate a denial of due

> process. Had the information sought been maintained by the State Bar, then [petitioner's] motion to compel would have carried more weight. . . . [Petitioner's] claim of bias is highly generalized and such broad claims have been rejected previously. (Cf In re Utz (1989) 48 Cal.3d 468, 477-478.) (Petitioner's Appendix 22a.)

In affirming the Assistant Presiding Referee's denial of petitioner's various motions to disqualify her hearing referee on the ground that he was biased, the Review Department further commented:

> The assigned hearing judge or referee is entitled to exert **reasonable control over the conduct of proceedings.** (citations omitted) Requiring one counsel to question a witness from beginning to end, asking that [petitioner] not speak to her attorneys while the hearing referee is addressing counsel and expecting that counsel will note their objections for the record and move forward with the hearing are not unreasonable standards for courtroom behavior, do not deprive [petitioner] of the statutory recognition of legal assistance during her

> disciplinary hearing (See Bus. & Prof. Code, §6085(b)) and do not, without more, constitute bias on the referee's part. (Petitioner's Appendix 29a, emphasis added.)

Finally, the Review Department reviewed and rejected as meritless two additional claims propounded by petitioner regarding the alleged bias of the hearing referee, both of which are raised in the instant petition for writ of certiorari. The first claim concerned the hearing referee's contact, for scheduling purposes, with a judge presiding over a criminal jury trial in New York in which petitioner represented the defendant. The second claim concerned the hearing referee's recommendation to the State Bar Office of Trial Counsel that it should investigate the conduct of petitioner's two attorneys for possible revocation of their pro hac vice status, based on

misconduct during the disciplinary proceedings. (Petitioner's Appendix, 29a-32a.)

On April 6, 1992, petitioner requested that the California Supreme Court review the decision and recommendations of the Review Department. In so doing, petitioner again challenged her disciplinary proceedings on constitutional grounds, raising the same contentions regarding denial of discovery, institutional bias and alleged judicial misconduct which had been raised and rejected both in State Bar Court and federal court. (See Petition for Writ of Certiorari, pp. 17-18.)

The petition for writ of review to the California Supreme Court was denied on June 15, 1992. (Petitioner's Appendix 1a-3a.) Petitioner now files the instant petition for writ of certiorari, once

again raising the same constitutional challenges to her disciplinary proceedings.

## III

## ARGUMENT

Respondent respectfully submits that this petition for writ of certiorari should be denied. Petitioner has failed to allege grounds for review under Rule 10. Moreover, petitioner's contention that the abstention doctrine has precluded her from raising her constitutional claims in an unbiased tribunal is without merit. On the contrary, petitioner's claims of bias and selective prosecution have been raised and rejected by the Review Department of the State Bar Court, the California Supreme Court, the United States District Court and the Ninth Circuit Court of Appeals.

In short, petitioner was disciplined

solely because she was culpable of egregious misconduct. Apparently, petitioner cannot accept this fact, but chooses instead to repeatedly assert baseless allegations of bias in an attempt to divert attention from her misdeeds. Petitioner must not be allowed to waste the Court's time with these generalized and groundless claims. Her petition for writ of certiorari should be denied.

### A. Under Rule 10 of the Rules of the Supreme Court of the United States, Petitioner has Failed to Allege Grounds for the Exercise of this Court's Discretionary Review.

"Appeals are a matter of right while decisions on certiorari petitions are wholly discretionary." Durham v. United States, 401 U.S. 481, 483 fn."*", 91 S.Ct. 858, 860, fn."*" (1971), overrul'd on other grounds in Dove v. United States, 423 U.S. 325, 96 S.Ct. 579, 46 L.Ed.2d 531

(1976).

Pursuant to Rule 10, a review on writ of certiorari will only be granted when there are "special and important reasons" therefor. The Court does not ". . .sit for the benefit of the particular litigants." Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 74, 75 S.Ct. 614, 616, 99 L.Ed 897 (1955)(citations omitted). "Special and important reasons" imply a "reach to a problem beyond the academic or the episodic." Id. at 616.

Rule 10 provides in pertinent part that the "character of reasons" which will be considered for review are as follows: (a) when a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter, or has decided a federal question in a way which conflicts with a state court of last

resort; (b) when a state court of last resort has decided a federal question in a way that conflicts with another state court of last resort; or (c) when a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

In this case, petitioner is asking the Court to sit for the benefit of a particular litigant. She has raised no applicable grounds for discretionary review under Rule 10. She cites no conflict between the circuits, between state courts of last resort or between a federal court of appeal and a state court of last resort. Neither does she contend that the California Supreme Court has decided an important question of federal

law that either should be decided by this Court or that conflicts with applicable decisions of this Court. Rather, petitioner appears to contend that discretionary review should be granted because the abstention doctrine has precluded her from having her generalized and groundless claims of constitutional violations heard in an unbiased tribunal.[5] For the reasons set forth herein, the State Bar respectfully submits that petitioner's contention is wholly without merit.

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[5] Petitioner contends that ". . . this case presents an important issue of federal judicial policy and constitutional law with respect to the role of this Court in assuring the constitutionality of state disciplinary systems that are susceptible to economic and ideological self-interests and biases, given the unavailability of the District Courts to perform this function." (Petition for Writ of Certiorari, p. 25.)

B. **Petitioner's Claims of Constitutional Violations Have Been Fully Reviewed and Rejected by the Review Department of the State Bar Court and by the California Supreme Court.**

The Review Department of the State Bar Court, after independently examining the Hearing Department's record,[6] concluded that petitioner had not been subjected to selective prosecution or institutional bias but had received a full and fair hearing. (Petitioner's Appendix 19a-32a). Moreover, petitioner's allegations of constitutional violations, which she raised in her petition for review, were rejected by the California

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[6] Rule 453 of the State Bar Transitional Rules of Procedure provides in pertinent part that: "[i]n all matters before the review department, that department shall **independently review** the record and may adopt findings, conclusions and a decision or recommendation at variance with the hearing department." (emphasis added)

Supreme Court when it denied her petition. (Petition for Writ of Review, pp. 17-18; Petitioner's Appendix 1a-3a.) Thus, petitioner's claims of bias and discrimination by the hearing department referee have been raised and rejected at every level of review within the state system.

As the Ninth Circuit emphasized in its order dated January 14, 1991, California's attorney disciplinary scheme provides for independent state judicial review of the findings and recommendations of the State Bar Court, thereby making abstention under Younger possible. (Respondent's Appendix A-7 through A-9; Cal. Bus. & Prof. Code §6082, §6083.) Specifically, an attorney may petition to the California Supreme Court directly for review of any decision of the State Bar Court recommending disbarment, suspension,

or lesser discipline. (See rule 952(a)-(c) of the California Rules of Court.) The court of appeals noted that under Younger, supra, 401 U.S. 37, and its progeny, even if a federal plaintiff cannot raise her constitutional claims in state administrative proceedings, her ability to raise the claims via state judicial review of the administrative proceedings suffices to support abstention. (Respondent's Appendix A-8, A-9.)

Thus, when she petitioned the California Supreme Court for review of the Review Department's recommendations pursuant to California's disciplinary scheme, petitioner had ample opportunity to convince that unbiased and independent tribunal of the merits of her claims of systemic bias and discrimination on the part of the State Bar. The California

Supreme Court was of course unpersuaded by her arguments and summarily denied her petition for review. (Petitioner's Appendix 1a-3a.)

### C. Both the United States District Court and the Ninth Circuit Court of Appeals Have Held That Petitioner Has Failed to Demonstrate Bias or Discrimination on the Part of the State Bar.

Both the United States District Court, Central District of California, and the Ninth Circuit Court of Appeals concluded, after examining petitioner's contentions presented during the course of her declaratory relief action, that she had utterly failed to make a showing of harassment or bias for purposes of creating an exception to abstention under Younger, supra, 401 U.S. 37. In fact, the district court specifically held and the Ninth Circuit affirmed that petitioner

demonstrated "no extraordinary circumstances or proven bias on the part of the State Bar." (Respondent's Appendix A-11.)

Petitioner could prove no bias because there was none. In essence, petitioner was prosecuted by the State Bar of California and disciplined by the California Supreme Court for one reason and one reason only: she was culpable of egregious misconduct as an attorney.

### D. The Fact that Disciplinary Proceedings Before the State Bar Hearing Department Were Conducted Prior to 1989 Procedural Reforms, Provides No Basis for the Granting of Discretionary Review.

Finally, petitioner appears to contend that, because the original disciplinary proceedings before the State Bar Court Hearing Department referee were administered prior to implementation of the "new" disciplinary system in 1989, she

was subjected to selective prosecution and institutional bias. Even assuming she was subjected to a biased prosecution by the volunteer hearing referee, which she most certainly was not, petitioner herself points out that the independent review of the record conducted by the Review Department of the State Bar Court was administered under the "new" disciplinary system. (Petition for Writ of Certiorari, pp. 30-31; Petitioner's Appendix 26a.)[7]

The "new" Review Department, after an extensive independent review of the record, found that petitioner's claims of

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[7] In fact, Rule 452 of the State Bar's Transitional Rules of Procedure guarantees Review Department scrutiny. Specifically, rule 452 provides, as an added procedural safeguard, that even if a member does not request review of a Hearing Department decision, if the proceedings were commenced prior to the 1989 reforms, the Hearing Department's decision will automatically be reviewed ex parte by the Review Department.

institutional bias, selective prosecution and discrimination were utterly meritless, found that she had committed egregious violations of the California Business and Professions Code and Rules of Professional Conduct, and recommended severe discipline.

## IV

## CONCLUSION

For the foregoing reasons, respondent respectfully requests that the petition for writ of certiorari be denied.

DATED: October 14, 1992

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| ALVAADER FRAZIER, | ) No. 89-55675 |
| Plaintiff-Appellant, | ) D.C. No. CV 89-2586-WDK |
| v. | ) |
| STATE BAR OF CALIFORNIA; TERRY ANDERLINI, | ) MEMORANDUM[1] |
| Defendants-Appellees. | ) |

On Appeal From the United States District Court for the Central District of California
William D. Keller, District Judge, Presiding

Before: BEEZER and TROTT, Circuit Judges, and CROCKER,[2] District Judge

The district court abstained from

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[1]This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

[2]The Honorable M.D. Crocker, United States District Judge for the Eastern District of California, sitting by designation.

enjoining the attorney disciplinary proceedings that were pending before the State Bar Court of California against Alvaader Frazier. Frazier appeals the district court's denial of her request for preliminary injunction and its sua sponte abstention and dismissal under Younger v. Harris. We affirm.

Frazier, an African-American woman, was admitted to the practice of law in California on December 3, 1982. Shortly thereafter, she opened a general practice law office in South Central Los Angeles, as a sole practitioner. The majority of her clients were Black and Latino, low income individuals with problems in the areas of housing, public benefits, family matters, and criminal law.

From December 1982 to May 1985, Frazier was retained by nearly 500 clients. In May 1985, Frazier closed her

practice because of a family crisis. She notified the State Bar of California (State Bar) and attempted to inform her clients of the closing. She also attempted to provide her clients with names of attorneys who would be willing to accept employment as successor counsel.

On August 11, 1988, the Office of Trial Counsel of the State Bar commenced a formal disciplinary hearing against Frazier in the State Bar Court. The Notice to Show Cause contained fifteen counts covering allegations that Frazier had failed to perform, misappropriated moneys and abandoned clients.

From August 1988 to late April 1989, various pretrial proceedings took place in the State Bar's disciplinary proceeding against Frazier. It was during this pretrial period that Frazier's claim that she is the subject of a racially based,

bad faith, selective prosecution first surfaced.

In March 1989, Frazier sought discovery from the State Bar on the racial and gender breakdown of all members against whom disciplinary proceedings had been filed. She also requested similar statistical data about members against whom charges were dropped, and about referees who were appointed to take part in the disciplinary proceedings.

Frazier states that she was denied this crucial discovery. The State Bar states that she was provided with all information, to the extent that it was available, but that the State Bar does not keep the kind of records that Frazier was seeking.

On April 28, 1989, Frazier filed an action in federal court requesting declaratory and injunctive relief in the

form of a preliminary injunction enjoining the State Bar from proceeding in her disciplinary action or a preliminary injunction staying the disciplinary proceedings until the California Supreme Court had entertained a petition from Frazier for review of her constitutional claim.

On May 5, 1989, the district court heard Frazier's application for a Temporary Restraining Order. The district court denied the application and decided to dismiss Frazier's action under the Younger abstention doctrine. The court held that Frazier's rights were adequately protected and that there were no extraordinary circumstances or proven bias that would preclude the court from abstaining. On May 12, 1989, a written order was filed confirming the court's earlier ruling at the May 5th hearing.

The district court's order was entered on May 18, 1989, and Frazier timely appealed.

We have jurisdiction under 28 U.S.C. § 1291. Abstentions on the basis of Younger v. Harris, 401 U.S. 37 (1971), are reviewed de novo. Partington v. Gedan, 880 F.2d 116, 120 (9th Cir. 1989). Our review of the district court's abstention is limited to the record before the district court at the time of the hearing on Frazier's motion for a Temporary Restraining Order.

In Younger, the Supreme Court noted Congress' demonstrated intent to protect state court proceedings from federal intervention. 401 U.S. at 43. This intent is spelled out in 28 U.S.C. § 2283 (1988), which provides that:

> A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where

> necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Younger Court also noted that besides the three narrow exceptions established by Congress, there is only one judicial exception to the rule against enjoining a state court proceeding. The judicial exception exists when a person can show that he will suffer irreparable damages if his prosecution in state court is not enjoined. 401 U.S. at 43.

In Middlesex County Ethics Comm. v. Garden State Bar Assoc., 457 U.S. 423 (1982), the Supreme Court held that Younger abstention applies to pending state bar disciplinary proceedings. The Middlesex Court stated that the pertinent inquiry in reviewing state proceedings, such as the State Bar disciplinary proceedings brought against Frazier, is

the question whether the proceedings provide an adequate basis for raising constitutional claims. Id. at 432.

Frazier applied for an injunction against the State Bar on the ground that she was being blocked in the disciplinary proceedings from presenting her constitutional claims of racial discrimination. Frazier does not contend that California law fails to provide for review of any findings or recommendation that call for disciplinary action. She asserts rather that the actions of the State Bar in her proceedings demonstrates that she was precluded from raising her constitutional claims. She states that the denial of her discovery requests defeated her attempts to develop a case of systematic bias based on race and gender.

In Partington v. Gedan, we held that under Younger abstention, "even if a

federal plaintiff cannot raise his constitutional claims in state administrative proceedings that implicate important state interests, his ability to raise the claims via state judicial review of the administrative proceedings suffices." 880 F.2d at 124. The fact that Frazier may have been frustrated in her initial attempts to raise her constitutional claims of discrimination did not create an exception to Younger.

Nor would the California Supreme Court have to take Frazier's discovery issues on interlocutory appeal. Partington requires only that Frazier have an opportunity for state judicial review. The California disciplinary proceedings provide for such a review. See Cal. Bus. & Prof. Code § 6082 (West 1990). The district court correctly abstained on the ground that Frazier had sufficient

opportunity to present her constitutional claims.

Frazier further asserts that abstention was improper because a showing of harassment or bias creates an exception to Younger abstention. Frazier's analysis of the law is correct. See Partington, 880 F.2d at 124. However, her assertion that she made a showing of bias before the district court fails. Frazier must overcome the presumption that the State Bar and the California Supreme Court are unbiased. See Partington, 880 F.2d at 124. This presumption can be rebutted "by a showing of conflict of interest or some other specific reason for disqualification." Schweiker v. McClure, 456 U.S. 188, 195 (1982).

The record before the district court merely demonstrated that Frazier was having difficulty raising her claim of

discriminatory prosecution. There was no specific factual evidence that the disciplinary proceedings were brought merely to harass or simply because Frazier is a Black woman. In fact, many of the former clients who initiated complaints against Frazier were black.

None of the evidence offered by Frazier was sufficient to overcome the presumption that the State Bar and the California Supreme Court were unbiased. The district court correctly determined that there were "no extraordinary circumstances or proven bias on the part of the State Bar."

AFFIRMED.

[stamped]

FILED JANUARY 14, 1991
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

DECLARATION OF SERVICE BY MAIL

I, Joan E. Bender, declare as follows:

I am a citizen of the United States and a resident of the County of San Francisco. I am over the age of eighteen years and not a party to the within entitled action. My business address is 555 Franklin Street, San Francisco, California 94102. On October 14, 1992, I served the within

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

on petitioner by placing three copies thereof enclosed in a sealed envelope with first-class postage thereon fully prepaid in the United States mail at San Francisco, California, addressed to petitioner's counsel of record as follows:

Arthur R. Block, Esq.
250 West 57th Street
Suite 317
New York, New York 10019

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed this 14th day of October, 1992, at San Francisco, California.

Joan Bender